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Special theme: Millennium Development Goals and indigenous peoples: goal 2 of the Millennium Development Goals: "Achieve universal primary education", to be addressed under the thematic approaches of language, cultural perspectives and traditional knowledge

Information received from the United Nations system

Note by the Secretariat

Addendum

Secretariat of the Convention on Biological Diversity

Summary

In the Convention on Biological Diversity (CBD) the international community acknowledged the close and traditional dependence of many indigenous and local communities on biological resources, the vital role that these resources play in their lives and livelihoods and the important contribution that traditional knowledge can make to the conservation and sustainable use of biological diversity.

The States parties to CBD have taken steps to comply with these commitments. The Conference of the Parties established a subsidiary body — the ad hoc open-ended intersessional Working Group on Article 8 (j) and Related Provisions — to address these issues and to develop an ambitious programme of work, which was adopted by the Conference of the Parties in 2000 and provides the basis for action on traditional knowledge within the framework of the Convention.

Given their direct relevance to the work of the Convention, and in particular to the programme of work on article 8 (j), the present document contains a brief

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summary of ongoing work specifically in relation to the recommendations addressed to CBD by the Permanent Forum on Indigenous Issues at its second and third sessions. However, since the last meeting of the Conference of the Parties took place before the third session of the Permanent Forum, the recommendations addressed to CBD at that session will be transmitted by the Executive Secretary to the next meeting of the Conference of the Parties and the meeting of the Working Group on article 8 (j), to take place in March and May 2006, respectively.

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I. Introduction

1. The Convention on Biological Diversity (CBD) and the Millennium Development Goals are two of the most important initiatives of the world community in the development field. The profound relationship between biodiversity and poverty, and hence the need for the Convention on Biological Diversity and the process under the Millennium Development Goals to cooperate, has been recognized at the highest levels.

2. The entire CBD programme of work is designed to contribute to sustaining biodiversity and therefore significantly supports the Millennium Development Goals. The six individual thematic programmes of work under the Convention (marine and coastal biodiversity; agricultural biodiversity; forest biodiversity; the biodiversity of inland waters; biodiversity of dry and sub-humid lands; and mountain biodiversity), and the cross-cutting themes (essentially corresponding to the issues addressed in the Convention's substantive provisions in articles 6 to 20: biosafety; access to genetic resources; traditional knowledge, innovations and practices (article 8 (j)); intellectual property rights; indicators; taxonomy; public education and awareness; incentives; and alien species), all have important linkages to the Millennium Development Goals, in terms of both what they offer for achieving the goals and the risks to the attainment of objectives that may arise from unsustainable development.

3. The various bodies of the Convention and the Executive Secretary have done a considerable amount of technical and policy work in each of the thematic areas and on cross-cutting issues. Collectively, they offer the elements for a road map to ensure that the implementation of the Millennium Development Goals takes advantage of the contribution that biodiversity can make to their achievement and to ensure that it is consistent with the objectives of the Convention.

II. Response to recommendations addressed by the Permanent Forum on Indigenous Issues exclusively to the Convention on Biological Diversity[1]

The work of the Convention on Biological Diversity on traditional biodiversity-related knowledge and of the ad hoc open-ended Working Group on Article 8 (j) and Related Provisions

4. The 188 parties to CBD are, as stated in the first preambular paragraph of the Convention, "conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components". Therefore, the interdependent relationship between biological and cultural diversity constitutes an integral part of the work of the Convention.

5. CBD contains a number of provisions of particular importance to indigenous peoples. The main provision is article 8 (j), in which parties undertake to respect, preserve and maintain the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. They also undertake to promote the wider application of such

knowledge, innovations and practices with the approval and involvement of the indigenous peoples concerned. Article 8 (j) also requires that benefits arising from the application of traditional knowledge, innovations and practices should be shared equitably with the indigenous communities concerned.

6. The parties to CBD have taken steps to comply with these commitments. The Conference of the Parties, the Convention's supreme decision-making body,[2] composed of all the Governments that have ratified the Convention, established a subsidiary body, the ad hoc open-ended intersessional Working Group on Article 8 (j) and Related Provisions, to address these issues and to develop an ambitious programme of work, which was adopted by the Conference of the Parties in 2000 and provides the basis for action on traditional knowledge within the framework of the Convention.[3]

7. The Working Group was mandated to oversee the implementation of the programme of work, which focuses on the following issues:

(a) The effective participation and involvement of indigenous and local communities in policy development and decision-making relating to the use of their traditional knowledge and practices relevant to the conservation and sustainable use of biological diversity;

(b) The development of mechanisms and legislation to foster the effective participation of indigenous and local communities in decision-making, policy planning and development and implementation of the conservation and sustainable use of biological diversity at all levels;

(c) The preparation of a composite report on the status and trends regarding traditional knowledge of indigenous and local communities;

(d) The development of guidelines on environmental, cultural and social impact assessment for developments proposed to take place on sacred sites and on lands and waters occupied by indigenous and local communities;

(e) The development of guidelines on the sharing of benefits arising from the utilization of traditional biodiversity-related knowledge and innovations;

(f) The development of elements of sui generis systems for the protection of traditional knowledge.

In addition, traditional knowledge is an important component of the thematic programmes of work on agricultural biodiversity, forest biological diversity, marine and coastal ecosystems, inland waters, and dry and sub-humid lands established by the Conference of the Parties to the Convention.

8. The Working Group on Article 8 (j) has held three meetings, made preliminary assessments of the status of traditional-knowledge protections and taken steps to involve members of indigenous and local communities in the CBD process.

9. Below is a brief summary of the ongoing work of CBD:

Akwé: Kon Voluntary Guidelines

10. The Conference of the Parties has been actively considering the question of the preservation of sacred sites and lands and waters occupied by indigenous and local communities. In February 2004, the seventh meeting of the Conference of the

Parties adopted guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or that are likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities, known as the Akwé: Kon Voluntary Guidelines. The Voluntary Guidelines provide guidance to Governments on the incorporation of cultural, environmental and social considerations of indigenous and local communities into new or existing impact assessment procedures. The Conference of the Parties requested Governments to use these guidelines whenever developments are proposed to take place on, or are likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities.

International regime on access and benefit-sharing and indigenous participation

11. The Working Group on Access and Benefit Sharing has been mandated, with the collaboration of the Working Group on Article 8 (j), to elaborate and negotiate an international regime on access and benefit-sharing to effectively implement the concepts of prior informed consent for access to genetic resources and of arrangement for the fair and equitable sharing of the benefits derived from the utilization of genetic resources.

12. The results of the deliberations of the Working Group at its meetings in February 2005 and March 2006 will be submitted for consideration by the Conference of the Parties at its eighth meeting, to be held in Brazil in May 2006. Noting the general recommendation of the Permanent Forum for increased participation, CBD is ensuring an adequate level of participation by indigenous representatives in these meetings, until the proposed voluntary fund is established after the eighth meeting.

Composite report on the status and trends regarding the knowledge, innovation and practices of indigenous and local communities

13. The work programme provides for the preparation of a composite report on the status and trends of traditional knowledge. The main objective is to identify the status and trends regarding the retention or loss of traditional knowledge, as well as the causal factors that underlie these trends.

14. The first phase of the composite report dealing with status and trends, and its regional components relating to Latin America, Asia, Europe, North America and Africa, was submitted to the third meeting of the ad hoc Working Group on Article 8 (j) and Related Provisions and, subsequently, to the seventh meeting of the Conference of the Parties, in February 2004, and is available on the secretariat web site (www.biodiv.org.).

15. In general, the report acknowledges the loss of traditional knowledge and emphasizes the relative scarcity of examples of measures and initiatives specifically designed to protect, promote and facilitate the use of traditional knowledge.

16. In February 2004, the Conference of the Parties requested that work be initiated immediately on the second phase of the composite report, laying emphasis on the identification of national processes and processes at the local-community level that may threaten the maintenance, preservation and application of traditional knowledge, innovations and practices, through national focal points and in

consultation with and with the approval of indigenous and local communities.[4] The secretariat has recruited consultants to prepare the second phase of the composite report, which will be complemented by a draft programme of action to retain traditional knowledge, which in turn will include possible indicators for traditional knowledge retention. That document will be submitted to the fourth meeting of the ad hoc open-ended Working Group on Article 8 (j). It is envisaged that the Working Group will use that submission as a basis for making recommendations for consideration by the eighth meeting of the Conference of the Parties, regarding the establishment of indicators.

17. Indigenous and local communities are invited to undertake field studies and to communicate their views to the secretariat on the above-mentioned issues as soon as possible, but not later than 31 May 2005 to ensure that their views are adequately reflected in the second phase of the composite report.

18. The secretariat of CBD is committed to working with indigenous and local communities and contributing to capacity-building for indigenous peoples. Indigenous and local communities are involved in the formulation and review of studies through consultancies, and now also through the advisory group/steering group that was recently created. That body, in which indigenous and local communities are represented, will assist in the completion of the composite report and undertake a peer review of the revised version, in consultation with indigenous peoples and local-community organizations that have participated in the work of the Convention.

Sui generis systems of protection based on customary laws of indigenous peoples

19. The Working Group on Article 8 (j) will consider the issue of sui generis systems at its next meeting, in the first quarter of 2006. To prepare for this, the secretariat is in the initial phase of reviewing relevant material regarding sui generis systems and in relation to the other topics mentioned above. Indigenous and local communities and relevant organizations are invited to communicate to the secretariat any relevant information on existing sui generis systems, as well as their views and suggestions on the issues mentioned above, no later than 31 May 2005 to ensure they are taken into account in the preparation of documentation regarding sui generis systems of protection for the next meeting of the Working Group on Article 8 (j).

III. Response to recommendations made by the Permanent Forum on Indigenous Issues to the Convention on Biological Diversity and other agencies of the United Nations system

Workshop on the theme "Indigenous women, traditional knowledge and the Convention on Biological Diversity" and mainstreaming of gender issues[5]

20. The Forum's request for the holding of a workshop on indigenous women will be submitted to the Working Group on Article 8 (j) at its next meeting, which is expected to make recommendations to the eighth meeting of the Conference of the Parties. One of the general principles of the programme of work on article 8 (j) and related provisions is the full and effective participation of women of indigenous and local communities in all activities of the programme of work. Consequently, it is

important that indigenous women be active participants in developing and implementing the programmes of work and decisions of CBD.

21. As part of the work on the composite report, the Conference of the Parties requested in decision VI/10 C, para. 11, and subsequently reaffirmed the request in decision VII/16 E, that regional workshops be held to ensure the full participation of indigenous and local communities, particularly women, in the preparation of the report on status and trends of traditional knowledge relevant to biological diversity. The secretariat is planning to organize such regional workshops in the second quarter of 2005 in Latin America, Africa, Asia and the Pacific, and Eastern Europe and the Arctic region, subject to the availability of financial resources.

22. A training session for indigenous women was held by CBD prior to the third session of the Permanent Forum on Indigenous Issues, in 2004, and tentative plans are in place to hold training and capacity-building workshops for indigenous women as part of the programme of regional consultations for the composite report.

Workshop on cultural, environmental and social impact assessments based on the Akwé: Kon Voluntary Guidelines aimed at further strengthening the understanding of the link between environment and cultural diversity[6]

23. At its second session, the Permanent Forum on Indigenous Issues recommended, inter alia, that United Nations bodies, in particular the Convention on Biological Diversity, in coordination with the World Bank, the United Nations Development Programme, the Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development and the United Nations Environment Programme, organize a workshop on protecting sacred places and ceremonial sites of indigenous peoples with a view to identifying protective mechanisms and instituting a legal framework that makes cultural, environmental and social impact assessment studies mandatory and ensures the environmental accountability of economic, social and environmental projects that are proposed on sacred sites and lands, territories and waters traditionally occupied or used by indigenous peoples.

24. The holding of such a workshop was requested by the seventh meeting of the Conference of the Parties (decision VII/16 I), acting upon the request from the Permanent Forum on Indigenous Issues. The workshop is being organized in close cooperation with the United Nations Educational, Scientific and Cultural Organization, the United Nations University, the International Union for the Conservation of Nature and Natural Resources and the Permanent Forum on Indigenous Issues secretariat and is to be held from 30 May to 2 June 2005 in Tokyo, with the theme "Conserving cultural and biological diversity: the role of sacred natural sites and cultural landscapes".

Elements for an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities[7]

25. Following up on a recommendation of the Permanent Forum on Indigenous Issues, the Conference of the Parties requested the Working Group on Article 8 (j) and Related Provisions to develop elements of an ethical code of conduct to ensure respect for the cultural heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity, taking into account task 16 of the programme of work on article 8 (j) and related provisions.[5]

26. The secretariat has already started researching examples of codes of ethics and conduct governing research, as used by such bodies as research institutions, business and indigenous and local communities, and is also working on a draft version of the above-mentioned ethical code of conduct.

27. Furthermore, indigenous and local communities are invited to communicate to the Executive Secretary relevant information and views regarding the elements for an ethical code of conduct, as outlined above, no later than 31 May 2005 to ensure that they are taken into account in the preparation of documentation. Their contributions could be sent through their national focal points or through their respective indigenous or local communities.

28. Additionally, when the second phase of the composite report on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities is concluded, it will include elements for a programme of action, which in turn will include possible codes of ethics and conduct as strategies to protect and promote traditional knowledge. Furthermore, CBD has signed a memorandum of understanding with the World Intellectual Property Organization whose objective is to enhance cooperation between the two organizations on intellectual property issues concerning access to genetic resources and benefit-sharing and the protection of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.

IV. Other significant information regarding recent policies, programmes, budgetary allocations or activities regarding indigenous issues within the Convention on Biological Diversity

29. The seventh meeting of the Conference of the Parties and the last meeting of the ad hoc Working Group on Article 8 (j) took place before the third session of the Permanent Forum on Indigenous Issues. Consequently, and given their relevance to the work of the Convention, and in particular to the programme of work on article 8 (j) and related provisions, the Executive Secretary will transmit recommendations on indigenous women,[9] culture,[10] and environment,[11] to the fourth meeting of the ad hoc open-ended Working Group on Article 8 (j), to be held in Montreal, Canada, in March 2006, and to the eighth meeting of the Conference of the Parties, to be held in Brazil in May 2006.

V. Information and suggestions regarding the special theme of the fourth session, "Millennium Development Goals and indigenous peoples"

30. Noting that in decision VII/32 of the Conference of the Parties it was pointed out, among other things, that achievement of the Millennium Development Goals, in particular goal 1 (combating poverty and hunger), is dependent on the effective conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, CBD will suggest the incorporation of ways to more effectively

communicate the importance of biodiversity in achieving the Millennium Development Goals. It will be particularly important to point out the primary role that indigenous and local communities and their traditional knowledge play in finding frugal, sustainable, locally meaningful ways to alleviate poverty and in preserving biodiversity.

Notes

[1] *Official Records of the Economic and Social Council, 2004, Supplement No. 23* (E/2004/43), paras. 76-77.

[2] There have been seven meetings of the Conference of the Parties to date. The seventh was held in Kuala Lumpur from 9 to 20 February 2004, and the next will take place in Brazil from 8 to 19 May 2006.

[3] The programme of work on article 8 (j) and related provisions is contained in decision V/16. Decisions VI/10 and VII/16 further develop the work programme. All are available at www.biodiv.org/decisions/.

[4] See decision VII/16 E, available at www.biodiv.org/decisions/.

[5] See *Official Records of the Economic and Social Council, 2004, Supplement No. 23* (E/2004/43), paras. 11 and 75.

[6] See *Official Records of the Economic and Social Council, 2003, Supplement No. 23* (E/2003/43), paras. 55-56.

[7] Ibid., *2004, Supplement No. 23* (E/2004/43), paras. 37-38.

[8] See decision VII/16 I, para. 5, available at www.biodiv.org/decisions/.

[9] See *Official Records of the Economic and Social Council, 2004, Supplement No. 23* (E/2004/43), para. 11.

[10] Ibid., paras. 37-38.

[11] Ibid., paras. 77 and 85.

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Addendum

I. World Intellectual Property Organization

II. World Trade Organization

III. United Nations Framework Convention on Climate Change

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I. World Intellectual Property Organization

Summary

In the present document, the World Intellectual Property Organization (WIPO) summarizes its response to the recommendations of the United Nations Permanent Forum on Indigenous Issues made at its third session in 2004. In particular, attention is drawn to the development and examination of draft instruments for the protection of traditional cultural expressions/expressions of folklore and of traditional knowledge by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Information is also provided on measures to enhance the participation of indigenous peoples and local communities in the work of the organization, including the sessions of the Intergovernmental Committee.

A. Responses to recommendations addressed or relevant to the World Intellectual Property Organization by the Permanent Forum at its third session

1. The decisions and recommendations of the third session of the Permanent Forum that addressed or were relevant to WIPO were made available as a working document to the seventh session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in November 2004[1] and were introduced by a member of the Permanent Forum who participated in the session. The recommendations were favourably referred to by several member States and other participants in the session.[2] It is expected that these recommendations will continue to guide not only the work of the Intergovernmental Committee itself, but also the broader activities of WIPO on related issues.

2. In response to these recommendations, WIPO provides the following information.

Development and examination of draft instruments on traditional cultural expressions and traditional knowledge

3. In late 2003, the member States of WIPO decided on a new and extended mandate for the Intergovernmental Committee, which requires the Committee to accelerate its work and to focus in particular on the international dimension of intellectual property and traditional knowledge and traditional cultural expressions (or "expressions of folklore"). The new mandate of the Committee is not limited in the range of possible results that may eventually be achieved, including the possible development of an international instrument or instruments.

4. At the seventh session of the Intergovernmental Committee, which took place in November 2004, the Committee examined the first drafts of two instruments, one

[1] WIPO/GRTKF/IC/7/13.

[2] See draft report of session, WIPO/GRTKF/IC/7/15 PROV.

dealing with the protection of traditional cultural expressions/expressions of folklore and the other, in a parallel and linked manner, with traditional knowledge. These draft instruments are aimed at recognizing, among other things, collective interest in traditional know-how and expressions of traditional cultures that are innovative or creative and characteristic of a distinct cultural identity, and at strengthening the legal basis for the prevention of the misappropriation and misuse of such knowledge and expressions held by traditional communities, including indigenous peoples. These draft proposals include compliance with the principle of "free, prior and informed consent" and the recognition of customary laws and practices in the protection of traditional knowledge and traditional cultural expressions.

5. The Intergovernmental Committee called for further comments on the draft instruments, including specific suggestions for wording, before 25 February 2005, and requested the WIPO secretariat to produce, on the basis of the first drafts and all subsequent inputs and comments from participants in the seventh session, further drafts for consideration by the Committee at its eighth session, which will take place in June 2005.

6. All working documents, comments, papers, studies, questionnaires and other materials prepared for consideration by the Intergovernmental Committee, as well as comprehensive reports of its sessions, are available, in English, French and Spanish at http://www.wipo.int/tk/en/igc/documents/index.html.

Access to genetic resources and benefit-sharing

7. With regard to the intellectual property aspects of access to and benefit-sharing in genetic resources, discussions within WIPO and in other policy areas have focused largely on examining methods consistent with intellectual property treaties for requiring the disclosure within patent applications of, inter alia: genetic resources and associated traditional knowledge used in the development of a claimed invention; the country of origin, source or legal provenance of such genetic resources and traditional knowledge; and evidence of prior informed consent and equitable benefit-sharing. This work has in large part been undertaken at the request of the Conference of the Parties to the Convention on Biological Diversity, and is intended to support the objectives of the Convention.

8. The diverse approaches towards such disclosure requirements were discussed in the WIPO Technical Study on Patent Disclosure Requirements Related to Genetic Resources and Traditional Knowledge,[3] prepared by WIPO at the request of the Conference of the Parties to the Convention on Biological Diversity and submitted to the Conference of the Parties in 2004. Member States, indigenous peoples and traditional communities and other stakeholders continue to explore these complex and sensitive questions in the context of several processes within WIPO and elsewhere.[4] Within WIPO, the Standing Committee on the Law of Patents, the Working Group on Reform of the Patent Cooperation Treaty and the Intergovernmental Committee have all considered the issue. Following a further invitation from the Conference of the Parties to the Convention on Biological Diversity, WIPO is focusing on some specific issues identified as being of relevance

[3] WIPO Publication No. 786 E.

[4] See WIPO/GRTKF/IC/7/9 and the current database at http://www.wipo.int/tk/en/databases/contracts/index.html.

to the Convention. A draft examination of these issues has been prepared and will be considered by a special one-day ad hoc meeting in early June 2005. Relevant proposals and draft materials are currently available at http://www.wipo.int/tk/en/genetic/proposals/index.html.

9. WIPO's programme on genetic resources also responds to a widely felt need for more information about current practices concerning the intellectual property aspects of agreements on access to genetic resources and the sharing of consequential benefits. In order to provide a practical contribution in this area, WIPO, in cooperation with the secretariat of the Convention on Biological Diversity, is, inter alia, developing materials on intellectual property issues raised during the establishment of mutually agreed terms for access and benefit-sharing, including through the creation of a public, electronic database on intellectual property provisions in mutually agreed terms.[4] The Conference of the Parties to the Convention on Biological Diversity has encouraged WIPO to accelerate its work in this area.

Capacity-building

10. The programme of activities in this area includes a range of complementary practical activities, such as capacity-building, legislative assistance, awareness-raising training and cooperation with a broad spectrum of national, regional and international initiatives.

Contribution of expertise and experience by the Permanent Forum

11. The Permanent Forum is represented at sessions of the Intergovernmental Committee and has been represented at other national and regional events organized by WIPO. The Forum has also played a prominent role in the discussions of the Intergovernmental Committee on the enhancement of indigenous participation in the sessions of the Committee and has taken part in a WIPO regional conference on the protection of traditional knowledge and traditional cultural expressions. **WIPO considers that the Forum has already played a significant role in contributing expertise and experience to its activities and appreciates the mutual cooperation between itself and the Forum and WIPO.**

Participation of indigenous peoples and local communities

12. The member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Permanent Forum and indigenous representatives in the sessions of the Intergovernmental Committee. There is continuing exploration and consultation on options and modalities for facilitating and generally improving the participation of indigenous peoples in WIPO's work on these issues. **The practical experience and guidance of the Forum and its members are invaluable inputs to achieving this goal. Member States of WIPO have expressed their unanimous support for directly involving representatives of indigenous and local communities as much as possible in the work of the Intergovernmental Committee.**[5]

13. In this regard, a number of practical steps have already been undertaken, including a fast-track accreditation procedure for all non-governmental

[5] See WIPO/GRTKF/IC/4/15, para. 60.

organizations (NGOs) has been in place since the first session of the Intergovernmental Committee in April 2001. More than 100 NGOs have received accreditation, including many representing indigenous peoples. No applicant has been denied accreditation.

14. The General Assembly of WIPO has extended a formal invitation to the Permanent Forum to take part in the sessions of the Intergovernmental Committee, and many participants have welcomed its active participation. A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in the sessions of the Committee.

15. The funds provided by WIPO to support the participation of member States that are developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities.

16. Consultations and workshops at the national and regional level and other forums aimed at developing focused input for the Intergovernmental Committee have included representatives of the Permanent Forum and indigenous and local communities as speakers and participants. The WIPO web site provides for written contributions by accredited NGOs on the issues before the Committee. Specific briefings and consultations for representatives of NGOs, particularly representatives of indigenous and local communities, are also undertaken within the framework of meetings of the Committee.

17. The WIPO secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the Intergovernmental Committee, as well as related capacity-building and informational documents, including a series of case studies and a distance learning course contributed to by indigenous experts.

18. Steps have also been undertaken to encourage voluntary donors to support the immediate participation of representatives of accredited observers in the sessions of the Intergovernmental Committee. The Committee has also requested the development of a proposal to establish a voluntary fund at WIPO to fund the participation of representatives of indigenous peoples and local communities in its sessions. A draft proposal for a voluntary fund will be considered at the next session of the Committee, when its future directions will be considered for possible referral to the General Assembly.

19. At its most recent session in November 2004, the Intergovernmental Committee gave priority to extensive discussions on how to enhance the participation of indigenous and local communities. It agreed, among other things, that sessions of the Committee should be preceded by panel presentations chaired by a representative of an indigenous or local community. Such a panel will be held at the commencement of the eighth session of the Committee in June 2005.

20. Apart from the Intergovernmental Committee, the WIPO General Assembly stipulated that the one-day meeting on patent disclosure requirements in June 2005 should be timed so as to facilitate the participation of indigenous and local communities. For this reason, it is proposed to hold it back to back with the indigenous consultative forum, the indigenous panel and the next session of the Committee.

Cooperation with other organizations and agencies

21. As requested by the member States of WIPO and as recommended by the Permanent Forum, the organization continues to cooperate with other organizations and agencies on issues of concern to the Permanent Forum and to ensure that its work on recognition and protection of traditional cultural expressions and traditional knowledge is complementary to and supportive of their work, including: the secretariat of the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the World Health Organization (WHO), the United Nations Development Programme (UNDP) and the United Nations Industrial Development Organization (UNIDO). WIPO has also coordinated with the World Bank, the World Trade Organization and a range of regional bodies and NGOs.

B. Information and suggestions regarding the special theme of the fourth session, "Millennium Development Goals and indigenous peoples"

22. As noted in the technical position paper on the Millennium Development Goals and indigenous peoples prepared by the Inter-Agency Support Group on Indigenous Issues, **the knowledge systems and cultural expressions of indigenous peoples are of immense value for the peoples themselves as well as for the world as a whole. Thus, preserving, promoting and protecting traditional knowledge and cultural expressions contribute towards the achievement of the Millennium Development Goals.**

II. World Trade Organization

Summary

In the present document, the World Trade Organization provides updated information regarding the debate on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) relating to the protection of traditional knowledge at its committees and councils with regard to the review of the implementation of the Agreement. The World Trade Organization also provides information about its technical cooperation activities and training in this area.

23. The issues of the relationship between the TRIPS Agreement and the Convention on Biological Diversity and the protection of traditional knowledge and folklore, issues of interest to indigenous peoples, were first raised in the World Trade Organization in the Committee on Trade and Environment in 1995 and later in the TRIPS Council in 1999 under the review of article 27.3 (b). Article 27.3 (b), which allows exceptions from patentability in the case of certain plants and animals

other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes, came up for review in the TRIPS Council, as foreseen in the provision itself, in 1999 and this review continues to date.

24. At the Doha ministerial meeting of November 2001, Ministers instructed the TRIPS Council, in pursuing its work programme, including under the review of article 27.3 (b), the review of the implementation of the TRIPS Agreement under article 71.1 and the work foreseen pursuant to paragraph 12 of the Doha Ministerial Declaration (on so-called outstanding implementation issues), to examine, inter alia: the relationship between the TRIPS Agreement and the Convention on Biological Diversity; the protection of traditional knowledge and folklore; and other relevant new developments raised by Members pursuant to article 71.1. The Ministers further instructed the Council that, in undertaking this work, the TRIPS Council should be guided by the objectives and principles set out in articles 7 and 8 of the TRIPS Agreement and should take fully into account the development dimension (WT/MIN(01)/DEC/1, para. 19).

25. In the light of these instructions, the Council for TRIPS has worked since 2002 on three agenda items, namely: the review of article 27.3 (b); the relationship between the TRIPS Agreement and the Convention on Biological Diversity; and the protection of traditional knowledge and folklore.

26. These issues are also among the outstanding implementation issues being dealt with in a consultative process under the auspices of the Director-General of the World Trade Organization. The Director-General is to report to the Trade Negotiations Committee and the General Council no later than May 2005. The General Council is to review progress and take any appropriate action no later than July 2005.

27. The World Trade Organization also undertakes training and technical cooperation activities, both in and outside Geneva, in which the above-mentioned topics are dealt with as a part of the overall programme in the intellectual property area.

III. United Nations Framework Convention on Climate Change

Summary

In the present document, the United Nations Framework Convention on Climate Change provides background information on the consideration of recommendations from the second session of the Permanent Forum in 2003 by the Parties of the Subsidiary Body for Implementation of the United Nations Framework Convention on Climate Change in June 2004. The Subsidiary Body for Implementation would not reconsider recommendation 78 of the third session of the Permanent Forum at its upcoming session. The parties were however prepared to take some steps to enhance the participation of NGOs, including indigenous peoples organizations, within the Framework Convention on Climate Change process, albeit without any financial support. From the conclusions it may be understood that Parties do not intend to return to the issue in the immediate future.

A. Recommendations specifically addressed to the United Nations Framework Convention on Climate Change by the Permanent Forum at its second and third sessions

28. The recommendations of the Permanent Forum on Indigenous Issues at its second session addressed to the United Nations Framework Convention on Climate Change, contained in paragraphs 47 and 61 of the report of the Permanent Forum (E/2003/43, chap. I, paras. 47 and 61) were considered by the Parties to the United Nations Framework Convention on Climate Change in June 2004 during the twentieth session of the Subsidiary Body for Implementation within the discussions based on the document "Effective participation in the Convention process" (FCCC/SBI/2004/5). The report of the Subsidiary Body for Implementation summarizes the discussions by the parties (FCCCC/SBI/2004/10, paras. 105-109) and indicates that although Parties were reluctant to provide a status to indigenous peoples' organizations beyond the traditional observer status, they were prepared to take some steps to enhance participation by NGOs, including indigenous peoples organizations, within the Framework Convention on Climate Change process, albeit without recourse to financial support. From the conclusions it may be understood that the parties do not intend to return to the issue in the immediate future.

29. The recommendation, contained in the report of the Permanent Forum on its third session (E/2004/43, chap. I, para. 78) addressed to the United Nations Framework Convention on Climate Change, to "sponsor a workshop to discuss the merits and mechanisms for the establishment of a working group on indigenous peoples within the Conference of the Parties process, ensuring the participation of indigenous peoples from developed and undeveloped countries as well as interested member States" would require financial support.

30. In discussions during the twentieth session of the Subsidiary Body for Implementation, the Parties, although recognizing the importance of enhanced participation and wishing to encourage a fuller participation by indigenous peoples organizations, were not in a position to commit themselves to any action with financial implications or which envisaged new institutions. The Subsidiary Body for Implementation invited individual Parties to consider initiating ways to facilitate participation by indigenous peoples' organizations.

31. **Consideration of the matter in the Subsidiary Body for Implementation has been concluded and is not likely to be resumed at upcoming sessions of the Subsidiary Body. There will, however, be opportunities for representation by indigenous peoples in sessions of the Convention bodies and at workshops on substantive issues on the agenda of the United Nations Framework Convention on Climate Change. The Parties have also been encouraged to draw upon the expertise of indigenous peoples organizations when discussing matters of concern to them.**

B. Recommendation addressed to one or more agencies or to the United Nations system in general by the Permanent Forum at its third session

32. The recommendation contained in the report of the Permanent Forum on its third session (E/2004/43, chap. I, para. 85) to "support indigenous peoples'

organizations in order to develop capacity on research, work and proposals on human indicators applicable to the implementation of the environmental conventions and the plans and programmes of work of the Convention on Biological Diversity" is outside the direct remit of the Convention secretariat.

33. **The parties are sympathetic to the relevance of the Convention and its Protocol to indigenous peoples organizations and encourage their participation by ensuring that opportunities are available to them under the Convention process, including access to workshops and assistance with catalysing informal contacts. The Convention secretariat has no mandate to develop the capacity of observer organizations on research, work and proposals to develop human indicators applicable to the United Nations Framework Convention on Climate Change. Ongoing work on capacity-building for developing countries is focused at improving capacity-building in and for the Parties to the Convention and is not addressed specifically at indigenous peoples organizations.**

34. In summarizing, the recommendation of the third session of the United Nations Permanent Forum on Indigenous Issues addressed to the UNFCCC, contained in paragraph 78 of the report would have financial implications and consequently can be said to have been addressed by the Subsidiary Body for Implementation. The recommendation contained in paragraph 85 concerning support for capacity-building within indigenous peoples organizations is outside the direct mandate of the Convention secretariat.

Annex I

Recent publications of the World Intellectual Property Organization relevant to indigenous peoples

- Two booklets on: "Intellectual Property and Traditional Cultural Expressions/ Folklore" and "Intellectual Property and Traditional Knowledge";
- Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions, by Ms. Terri Janke;
- A study on the Protection of Expressions of Folklore/Traditional Cultural Expressions, by Mrs. P. V. Valsala Kutty;
- Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore;
- World Intellectual Property Organization-United Nations Environment Programme Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the use of Biological Resources and Associated Traditional Knowledge

The publications listed above are available upon request from the WIPO secretariat and at http://www.wipo.int/tk/en/publications/index.html

Annex II

Extract from the report of the Subsidiary Body for Implementation on its twentieth session

The following extract from the report of the Subsidiary Body for Implementation (SBI) on its twentieth session is taken from document FCCC/SBI/2004/10:

"Participation of indigenous peoples

"105. The SBI considered the recommendations of the Permanent Forum on Indigenous Issues, as well as other requests by indigenous peoples organizations, summarized in document FCCC/SBI/2004/5.

"106. The SBI noted that indigenous peoples organizations have been admitted as observers in accordance with Article 7, paragraph 6, of the Convention and that the secretariat has an officer responsible for liaising with observer organizations, including the indigenous peoples organizations. It also noted that the agendas of the Convention bodies include items relevant to the concerns of indigenous peoples. The SBI encouraged the indigenous peoples organizations to make full use of the existing bodies and the opportunities currently afforded to them under the Convention.

"107. The SBI invited Parties to consider drawing on the expertise of indigenous peoples organizations when discussing matters of concern to them. It encouraged individual Parties to give consideration to ways of enhancing the participation of indigenous peoples organizations in the Convention process.

"108. The SBI acknowledged the importance of an enhanced participation by indigenous peoples organizations in the Convention process, in particular through discussions on relevant agenda items, participation in workshops and informal contacts. The SBI invited the chairs of relevant Convention bodies and the secretariat to facilitate such participation to the extent possible, without recourse to financial support.

"109. The SBI concluded that opportunities exist for fostering a full and effective participation by indigenous peoples organizations in the Convention process. It requested the secretariat to convey its conclusions to the Permanent Forum on Indigenous Issues."